



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: SEAIR Transport Services, Inc.

File: B-274162

Date: November 25, 1996

T. J. Coulter for the protester.

Pamela J. Mazza, Esq., and Philip M. Dearborn, Esq., Piliero, Mazza & Pargament, for Akima Corporation, an intervenor.

Kim N. Haris, Esq., Defense Logistics Agency, for the agency.

Mary G. Curcio, Esq., and John M. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Evaluation of protester's past performance was reasonable--and adequately took into account recency and seriousness of deficiencies--where it was based on performance ratings from offeror-furnished prior contract references.

DECISION

SEAIR Transport Services, Inc. protests the award of a contract to Akima Corporation for the operation, maintenance, and protection of a government-owned petroleum terminal at San Pedro, California under request for proposals (RFP) No. SPO600-96-R-0086, issued by the Defense Fuel Supply Center, Defense Logistics Agency (DLA).

We deny the protest.

The contract was to be awarded to the offeror whose proposal met the minimum requirements set forth in the solicitation and provided the best value combination of past performance (more important) and price. With respect to past performance, each offeror was required to provide specified information, including a reference, for each of its three most recent contracts that involved work similar to that covered by the RFP. Upon receiving the initial proposals, DLA sent each of the references a past performance survey to complete. The survey consisted of 20 questions, the first 12 of which called for the respondent to rate the offeror's performance unsatisfactory, satisfactory or good, and the last 8 of which required a yes or no answer. DLA then assigned each answer a score and, using a mathematical formula, developed a ranking for each proposal.

Akima's best and final offer (BAFO) was ranked first (out of 10 received) for past performance and second for price (\$93,787 per month). SEAIR's BAFO was ranked last for past performance, but first for price (\$92,470 per month). The agency performed a best value analysis, determined that Akima's proposal represented the best value to the government, and awarded a contract to Akima.

SEAIR challenges the past performance evaluation, and thus the propriety of the award, on the basis that the agency improperly failed to consider the recency and seriousness of the performance deficiencies which underlie the ratings provided by its references.

SEAIR's argument is without merit. First, as indicated, offerors were required to furnish references and information for their three most recent similar contracts. The contracts referenced by SEAIR were performed in 1995 and 1996. Since SEAIR provided the specific contract references and since they all involved relatively recent contracts, we see no reason why these contracts would be inappropriate to form the basis for a reasonable past performance rating.

Second, DLA's evaluation did take into account the seriousness of the performance deficiencies. As explained, offerors' final past performance ratings were derived directly from the ratings submitted by the offerors' own prior contract references; seriously deficient performance presumably would lead the reference to rate the offeror's performance unsatisfactory under the relevant survey response, while less serious deficiencies would not. While under this methodology DLA did not specifically consider each deficiency for seriousness, the references' ratings, by their nature, did take seriousness into account, and the agency then essentially relied upon the references' judgments in this regard. There is nothing objectionable in this evaluation approach; indeed, it is essentially the same approach agencies commonly use in evaluating technical proposals when the source selection official relies on evaluators' scoring in ranking proposals and making the award decision. See, e.g., PCL/American Bridge, B-254511.2, Feb. 24, 1994, 94-1 CPD ¶ 142.¹

¹The solicitation reserved to the government the right to consider past performance information that it obtained through means other than the references provided by the offerors. SEAIR complains that the contracting officer considered additional information in her files regarding SEAIR's past performance on contracts that SEAIR did not perform. The agency disputes this, asserting that the information considered had been furnished by contract references SEAIR had previously provided in connection with a few procurements. This matter is irrelevant in any case since SEAIR's past performance rating would have remained the lowest even had this additional information not been considered.

In any case, it is clear from the record that the contracting officer was fully aware of the problems under SEAIR's prior contracts, and considered some of them--such as safety violations and financial problems which resulted in subcontractors suspending services in certain cases--to be serious. We also note that SEAIR was given the opportunity to review and respond to the past performance information. (SEAIR's responses did not change the agency's evaluation.)

SEAIR also challenges the award on the basis that the evaluation of Akima's past performance was unreasonable. As the agency explained in its report, however, Management Engineering Associated, Inc., not SEAIR, would be in line for award if we sustained this ground of protest and upset Akima's award. SEAIR therefore is not an interested party to challenge the evaluation of Akima's past performance. See Cyber Digital, Inc., B-270107, Jan. 24, 1996, 96-1 CPD ¶ 20.²

The protest is denied.

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²In supplemental comments filed in our Office on October 16, SEAIR argued for the first time that DLA acted in bad faith in connection with an earlier procurement (in Norwalk, Connecticut). This argument is untimely. Bid Protest Regulations, § 21.2(a)(2), 61 Fed. Reg. 39043 (1996) (to be codified at 4 C.F.R. § 21.2(a)(2)). To the extent the argument is intended to relate to the current protest, agency actions in connection with other procurement are irrelevant since each procurement stands on its own. CardioMetrix, B-270777, Mar. 27, 1996, 96-1 CPD ¶ 168.